E COPY

FEB 24

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

versus

T. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA.

Appellee.

ORIGINAL BRIEF FOR APPELLEE.

PERCY SAINT,
Attorney General;
W. H. THOMPSON,
Assistant Attorney General.

GEORGE SETH GUION,
Of Counsel.

Filed: February, 1930.

SUBJECT INDEX.

Page

STATEMENT OF THE CASE 1

ARGUMENT 10-57

POINT I. Act 5 of 1928 is not void and does not deny to plaintiff the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States 10-51

(a) The statute does not operate a systematic and oppressive discrimination against appellant 13

(b) The statute does not effect any discrimination and the classification adopted by the Legislature is a reasonable one and rests upon a reasonable basis.

1. The tax provided by Act 5 of 1928 is reasonable and is neither unreasonable nor arbitrary 36

2. The clasification provided by Act 5 of 1928 is reasonable and is neither unreasonable nor arbitrary..... 48

POINT II. Act 5 of the Legislature of Louisiana of 1928 is not in conflict with Section 21 of Article X of the Constitution of Louisiana..... 52-56

(a) The severance tax levied by said statute is levied in accordance with said Article and section, and is based upon the quantity of oil produced as is therein authorized..... 52

(b) The classification adopted is a reasonable one, and is neither unreasonable nor arbitrary 55

TABLE OF CASES.

	Page
Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232	30
Billings v. Illinois, 188 U. S. 97	30
Citizens Telephone Co. v. Fuller, 229 U. S. 322	29
Crescent Oil Co. v. Mississippi, 257 U. S. 137	35
Dawson v. Kentucky Distilleries Co., 255 U. S. 288	52
Decisions per curiam, etc., 264 U. S. 573	5, 10
Gulf Refining Co. of La. v. McFarland, 154 An. 251	5, 10
Hart Refineries Co. v. Harmon, 278 U. S. 499	30, 47
Heisler v. Thomas Colliery Co., 260 U. S. 254	44
Keeney v. New York, 222 U. S. 536	29
Kline v. Jefferson Cy. Board of Tax Supervisors, 18 S. W. (2d Ed.) 1012	30
Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 62	14, 35
L. & N. R. R. Co. v. Garrett, et als., 231 U. S. 298	53
Metropolis Theatre Co. v. City of Chicago, 228 U. S. 61, 47 Sup. Ct. Rep. 646	14
Michigan Central R. R. Co. v. Powers, 201 U. S. 291, 245	51, 53
Ohio Oil Company v. Supervisor of Public Accounts, 28 Fed. Rep. (2d Series), 441	9
Ohio Oil Company v. Conway, 279 U. S. 813, 49 Sup. Ct. Rep. 256	9
Radice v. People of State of New York, 264 U. S. 292	14
Ritsy v. Chicago R. I. & Pac. Ry. Co., 270 U. S. 378	52

TABLE OF CASES—(Continued)

	Page
Salomon v. State Tax Commission, 49 Sup. Ct. Rep. 195, 73 L. Ed. 464	56
Standard Oil Co. of La. v. Police Jury, 140 La. 46, 47	3, 10
Stebbins v. Riley, 268 U. S. 137, 169 L. Ed. 884	30
Toyota v. Territory of Hawaii, 226 U. S. 184	30
Truax v. Corrigan, 257 U. S. 312	30
United Fuel Gas Co. v. Railroad Commission, 49 Sup. Ct. Rep. 159, 73 L. Ed. 391	52

STATUTES INVOLVED.

Act 140 of 1922	61-73
Act 301 of 1926	74-76
Act 5 of 1928	77-82

ARTICLES OF CONSTITUTION CITED.

Section 21 of Article X of 1921	4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. 440

THE OHIO OIL COMPANY,

Appellant,

versus

E. A. CONWAY, SUPERVISOR OF PUBLIC ACCOUNTS OF THE STATE OF LOUISIANA.

Appellee.

ORIGINAL BRIEF FOR APPELLEE.

STATEMENT.

In 1910 the Legislature of the State of Louisiana, by Act 154, proposed an amendment to Article 229 of the Constitution. This amendment was submitted to the people of the State and was ratified at an election held in November of that year. This amendment provided:

> "Those engaged in the business of severing natural resources, as timber and minerals, from the soil or water whether they thereafter convert them by manufacturing or not, may also be rendered liable to a license tax, but in this case the amount to be collected may either be graduated or fixed according to the quantity or value of the product at the place where it is severed."

At its session in 1912, the Legislature passed Act 209. The object of this act was to carry into effect the provisions of the Constitution of 1898, as amended, and to provide for the levying of an annual license tax upon all persons engaged in the business of severing natural products from the soil.

The license exacted was one-half of one per cent of the gross value of the total production, less the royalty interest accruing to the owner. The value of the products was to be computed at the place where they were severed or taken from the soil.

Thereafter, the Legislature passed Act 296 of 1914, which authorized the police juries of the several parishes to levy an annual license tax not to exceed the amount levied by the State.

Under this authority the Police Jury of Red River Parish levied a license tax of one and one-half per cent of the gross value of the total production (less the royalty interest) upon those engaged in severing minerals, including oil, gas and sulphur.

The Standard Oil Company paid this tax, under protest, and instituted suit to recover the amount paid, and to have the ordinance so passed declared unconstitutional.

The Oil Company contended that the ordinance was unconstitutional, because it exempted the royalty interest from the payment of the tax and thus discriminated against the remaining interest of those engaged in severing minerals from the soil. It was contended that the statute

and ordinance adopted an arbitrary and unfair classification, and discriminated against those pursuing the business of severing minerals and in favor of those severing timber from the soil, and that the said Act was unconstitutional in that it denied plaintiff the equal protection of the law, in violation of the Fourteenth Amendment.

The Supreme Court of Louisiana held that there was no arbitrary discrimination and no denial of the equal protection of the law.

Standard Oil Co. of La. v. Police Jury, 140 La., p. 47.

At its session in 1916, the Legislature passed Act 145. This statute provided for a tax upon production and the tax was fixed at the following rates:

2½ cents per 1000 feet for Pine Timber;
3 " " " " " Oak and Ash Timber;
4 " " " " " Cypress;
2 " " " " " all other kinds of Timber;
10 " " ton for Sulphur;
2 " " " " Salt;
1 cent per barrel for Turpentine;
1/5 of one mill per 1000 cubic feet of Gas;
3/4 of 1 per cent. per bbl. for Oil.

At the Extra Session of 1918, the Legislature passed Act 20 which provided the same rate as did Act 145 of 1916.

At its regular session in 1920, the Legislature passed Act 31 which levied a tax of 2 per cent. upon the gross value of the total production of the three preceding months. The Act provided that the value of the products severed were to

be computed as of the time when, and at the place where, each product or natural resource was severed or taken from the soil or water.

In 1921 a new Constitution was adopted for the State of Louisiana.

Section 21 of Article X of that Constitution, provides:

> "Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Such natural resources may be classified for the purpose of taxation and such taxes predicated upon either the quantity or value of the product at the time and place where it is severed. No severance tax shall be levied by any parish or other local subdivision of the State.
>
> "No further or additional tax or license shall be levied or imposed upon oil or gas leases or rights, nor shall any additional value be added to the assessment of land, by reason of the presence of oil or gas therein or their production therefrom."

Pursuant to this Article, and in order to carry into effect the above section and Article of the Constitution, the Legislature, at its session in 1922, passed Act 140. This Act divided the natural resources severed from the soil or water into two classes, and taxes thereon were levied at the following rates:

> On oil and gas 3 per cent. of the gross market value of the total production;
>
> **On all other natural resources 2 per cent.** of the gross market value.

The Supreme Court of Louisiana in the case of *Gulf Refining Co. v. McFarland, reported in 154 An., p. 251,* held that the tax levied by the above Act was not a property tax but an excise tax upon the privilege of severing, though it was measured by the value of the property severed. This decision was affirmed by this Court in decisions *per curiam*, etc., *264 U. S., p. 573.*

At its session in 1928 the Legislature of Louisiana passed Act No. 5, which amended Section 2 of Act 140 of 1922. This amendatory Act provides:

> "Taxes on natural resources severed from the soil or water, as levied by Section 1 of this Act, shall be predicated on the quantity severed, and shall be paid at the following rates:
>
> (1) On cypress timber, twenty-six (26) cents per thousand feet, log scale.
>
> (2) On second growth or old field pine timber, seven (7) cents per thousand feet, and on virgin pine timber (17) cents per thousand feet, log scale.
>
> (3) On ash and hickory timber, twenty-four (24) cents per thousand feet, log scale.
>
> (4) On cottonwood, red gum, magnolia, oak, poplar and sycamore timber, twelve (12) cents per thousand feet, log scale.
>
> (5) On tupelo gum, black gum and sap gum timber, seven cents (7c) per thousand feet log scale, and on all other hardwoods (10) cents per thousand feet, log scale.
>
> (6) On turpentine (crude gum), ten (10) cents per barrel of 400 pounds.

(7) a. On oil of 28° gravity and below, four (4) cents per barrel of 42 gallons.

b. (1) On oil above 28° gravity and not above 31° gravity, four and one-fourth (4¼) cents per barrel of 42 gallons.

b. (2) On oil above 31° gravity and not above 32° gravity, five (5) cents per barrel of 42 gallons.

(c) On oil above 32° gravity and not above 36° gravity, eight (8) cents per barrel of 42 gallons.

(d) On oil above 36° gravity and not above 43° gravity, ten (10) cents per barrel of 42 gallons.

(e) On oil above 43° gravity, eleven (11) cents per barrel of 42 gallons.

(8) On gas, one-fifth (1/5) of one cent (1c) per thousand cubic feet, measured at ten ounce (10 oz.) pressure.

(9) On sulphur, fifteen (15) cents per ton of two thousand pounds.

(10) On salt, four (4) cents per ton of two thousand pounds.

(11) On coal, five (5) cents per ton of two thousand pounds.

(12) On lignite, five (5) cents per ton of two thousand pounds.

(13) On ores, five (5) cents per ton of two thousand pounds.

(14) On marble, ten (10) cents per ton of two thousand pounds.

(15) On stone, one and one-half (1½) cents per ton of two thousand pounds.

(16) On gravel, one and one-half (1½) cents per ton of two thousand pounds.

(17) On sand, one (1) cent per ton of two thousand pounds.

(18) On shells, one and one-half (1½) cents per ton of two thousand pounds."

The Ohio Oil Company is engaged, and has been engaged, in the business of producing and purchasing oil in Louisiana. It produces oil in what is known as the Haynesville field in the Parish of Claiborne; in what is known as the Cotton Valley field in the Parish of Webster; in what is known as the Urania field, which is in the Parish of LaSalle, with some wells in the adjoining Parish of Winn, and in what is known as the Pine Island field in Caddo Parish. All these fields are situated in the northern part of the State. Complainant produces no oil in South Louisiana. (R., 74, 75).

At the time of the trial on its merits, complainant was not producing oil in what is known as the Urania field. (R., 74, 75).

Complainant contends that Act No. 5 of 1928 is unconstitutional. Reasons assigned for the alleged unconstitutionality are:

1st. That the said Act denies to it the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2nd. That the said Act violates Section 21 of Article X of the Constitution of 1921.

Complainant assigns six different grounds for its contention that the Act denies to it the equal protection of the law. They are, as follows:

(a) Because the burden laid by said act upon the production of oil by your complainant from the fields in which it operates in the State of Louisiana is grossly in excess of that laid upon and paid by producers of oil in other fileds in the State of Louisiana;

(b) Because the burden laid by the said act upon the production of oil by other persons and corporations engaged in identically the same occupation, and under the same circumstances, is made by said act to vary according to arbitrary standards, so that the occupation of complainant is subjected by said Act to a burden of taxation more than twice as great as that of other persons engaged in identically the same occupation;

(c) Because the standard fixed in said Act, levying the severance tax according to the gravity of the product severed, results in gross and unreasonable discrimination, in that such standard entirely ignores the market value of the oil produced, which varies widely in the different oil fields of the State of Louisiana; the net result thereof being to impose upon the oil produced by complainant a burden grossly excessive and discriminatory as compared with that laid by the statute upon oil produced from other fields in the State of Louisiana;

(d) Because the attempted classification of oil, for the purpose of taxation in the said statute, to-wit, that of gravity, is wholly arbitrary, has no reasonable relation whatever to any ground of difference having a fair and substantial relation to the value of oil produced in the various fields of the State of Louisiana, and results in grossly discrim-

inatory treatment as against complainant with respect to other persons similarly circumstanced;

(e) That said Act No. 5 of 1928 discriminates arbitrarily in favor of producers of oil in South Louisiana and against (fol. 8) producers of oil in North Louisiana, that the burden imposed by it upon the business of complainant and other producers of oil in North Louisiana is grossly excessive and discriminatory as compared with the burden imposed by it upon the production of oil in South Louisiana, and

(f) That said act is based upon discrimination of a most unusual character, which particularly operates against this complainant, in that under the said statute it is compelled to pay a tax in respect of oil produced by it, the burden of which is grossly in excess of that paid by other producers of oil of identically the same gravity.

Both temporary and permanent injunctions were sought. The application for temporary injunction was submitted to the three Judge court provided for by Section 266 of the Judicial Code, and was heard upon the bill, answer and affidavits. The injunction applied for was denied. (See *Ohio Oil Co. v. Supervisor of Public Accounts, 28 Fed. Rep., 2d Series, 441*). From said judgment complainant prosecuted an appeal to this Court.

This Court found that there was a dispute upon material questions of fact which could not be satisfactorily resolved upon the affidavits filed, and it was of the opinion that the lower Court should have issued an interlocutory injunction upon certain terms and conditions. *(Ohio Oil Company v. Conway, 279 U. S. 813, 49 Sup. Ct. Rep. 256).* An injunction was issued. A trial upon the merits was

had. The Court held the Act constitutional. The injunction prayed for was denied and the plaintiff's bill dismissed. (R., 65, 69). Plaintiff appeals directly to this Court.

ARGUMENT.

POINT I.

The authority to levy a tax upon those engaged in severing resources from the soil is expressly conferred upon the Legislature of Louisiana by the Constitution of the State. This authority has existed since 1910 and has been exercised since 1912.

During this period the Legislature has levied a tax both upon a quantity and a value basis, as shown in the statement in this brief.

The statutes levying this tax have been assailed, but their constitutionality and validity have been consistently maintained by the Supreme Court of Louisiana and by this Court.

> *Gulf Refining Co. v. McFarland, 154 An. 251;*
> *Decisions per curiam, etc., 264 U. S. 573;*
> *Standard Oil Co. of La. v. Police Jury, 140 La. 46.*

Section 21 of Article X of the Constitution of Louisiana expressly authorizes the Legislature to classify, for purposes of taxation, the natural resources of the State and to predicate the tax either upon the quantity or upon the value of the product at the time and place of severance.

The power to levy this tax, unlike the power to levy other taxes and licenses, is restricted solely to the State as parishes and other subdivisions of the State are prohibited by this article from levying same.

Pursuant to constitutional authority the Legislature of Louisiana adopted Act 140 of 1922. Under this Act a tax of 3 per centum was levied upon the gross market value of the production of said oil. (Appendix, pp. 61 to 73).

This Act was amended in 1928, and instead of levying the tax upon the gross market value it was levied upon a quantity basis, as authorized by Section 21 of Article X of the Constitution.

Recognizing and realizing that there was a wide and great difference in the various classes of timber, and that this difference was everywhere recognized because some classes were more valuable than others and therefore commanded better prices, the Legislature, exercising the wide latitude and discretion vested in it, classified timber into the following classes:

Cypress,	Magnolia,
Pine,	Oak,
Hickory,	Poplar,
Ash,	Tupelo Gum,
Cottonwood,	Black Gum,
Red Gum,	Sap Gum.

and sub-divided pine into what was called "old field pine" and "virgin pine," and levied different rates upon these different classes.

Realizing that in the oil industry there were differences in the crude oil produced, and that this difference was recognized by those engaged in it because it was bought and sold upon a gravity basis and prices quoted according to the gravity of the oil, all of which was a matter of public knowledge, the Legislature, exercising that discretion and power vested in it, levied the tax upon the quantity severed and classified the oil according to gravity, fixing a different rate for the different classes.

Complainant admits the right of the State to levy severance taxes. It admits that Act 140 of 1922 was and is a valid and constitutional act. It admits that the Legislature has the authority to classify, for purposes of taxation, the natural resources of the State. It admits that the tax is not a property one.

Its position is that, as to it, Act No. 5 of 1928 denies to it the equal protection of the law in violation of the Fourteenth Amendment.

The Court below consisted of one Circuit Judge and two District Judges; all of these judges resided in Louisiana. One of the judges resided in the Northern part of Louisiana, and the other two in the Southern portion. Necessarily, they possessed greater knowledge of local conditions and needs than is possessed, perhaps, by this Court. Each of them found that the classification adopted was not an arbitrary one; that it had a reasonable basis upon which to rest; that there was no clear and hostile discrimination against complainant, and that it was subject to no greater tax than others who severed and produced oil under the same circumstances and of the same class as complainant.

Appellant states its position in its assignment of error, as follows:

FIRST: That Act No. 5 of 1928 is void because it denies plaintiff the equal protection of the law, in violation of the Fourteenth Amendment, in that:

(a) The statute in question operates a systematic and oppressive discrimination against it.

(b) That the discrimination thus practiced rests upon no reasonable basis of classification.

SECOND: That said Act is void as being in conflict with Section 21 of Article X of the Constitution of Louisiana of 1921, in that:

(a) The severance tax imposed by said statute is levied neither according to quantity nor to value.

(b) That whatever classification is attempted is arbitrary and unreasonable.

(a)

The first question is:

Does the statute in question operate a systematic and oppressive discrimination against plaintiff, in violation of the Fourteenth Amendment?

This Court has repeatedly held that the equal protection clause of the Fourteenth Amendment does not take from the State the right to classify, but that it admits of the exercise of a wide discretion and only avoids the classi-

fication when it is without reasonable basis, and is palpably arbitrary.

This Court has repeatedly held that the burden of showing that classification does not rest upon a reasonable basis, and that it is palpably arbitrary rests upon the one assailing it.

It is also well settled that a State legislature cannot be controlled in the exercise of this discretion so long as it refrains from clear and hostile discriminations against all classes or persons.

Lindsley v. National Carbon Gas Co., 220 U. S., 62;

Metropolis Theatre Co. v. City of Chicago, 228 U. S. 61, 47 Sup. Ct. Rep., p. 646.

It is further settled that in order to violate the equal protection clause of the Fourteenth Amendment, the classification must be actually and palpably unreasonable and arbitrary. The mere production of inequality is not enough.

Radice v. People of State of New York, 264 U. S. 292.

Does this statute discriminate against plaintiff or the class to which it belongs, and if so, is such discrimination intentional, arbitrary and hostile?

The contention that the statute as against it is discriminatory, and deprives it of the equal protection of the law, is based upon the following:

That the oil produced by it in the fields named are assessed at a higher percentage of its valuation than is the oil produced in South Louisiana. That the oil produced by it in the Urania field is assessed at 5.5% of its value; in the Cotton Valley field at from 6½% to 6⅔%; in the Pine Island field at 7.5%, and in the Haynesville field at 6.5%, and that the oil produced in the Southern part of the State is taxed at a uniform rate of 3.4% of its value. That the Act thus taxes its property at a higher rate than other property, places upon it a greater burden than upon others, and is grossly discriminatory and arbitrary.

Plaintiff produces no oil in South Louisiana. Its activities are confined and limited to the production of oil in the Haynesville, Cotton Valley, Urania and Pine Island fields. At the time of the trial upon the merits, plaintiff was not operating in the Urania field. Plaintiff does not charge that the Act in question discriminates between oils of different fields in the Northern part of the State, but that it discriminates between oils produced in North Louisiana and oils produced in South Louisiana.

Plaintiff argues that the oil produced by it in the Urania field is similar, in all respects, to the oil produced in the Vinton field; that the oil from both fields have practically the same base; are used for the same purpose, and are shipped to the same destination. (R., 79). That, notwithstanding this fact, it receives 75c per barrel for its oil, while producers in the Vinton field receives $1.20 per barrel; that its property is taxed at 5.5% of its value, while the Vinton oil is taxed at 3.4%, and that the Act and the tax levied under the said Act discriminates between oils of the same class.

In arriving at the percentage upon which it contends that its property is taxed, complainant entirely overlooks and disregards the cost of transportation.

In Record No. 514, October Term, 1928, page 21, Sec. 2, *Ohio Oil Company v. E. A. Conway, Supervisor of Public Accounts*, the plaintiff's witness, C. D. Keene, testified as follows:

> "In these cases transportation costs constitute a large factor, and, of course, a high cost of transportation necessarily lowers the price that can be paid for the oil at the well."

In view of the charge of discrimination and of the allegation of the difference in prices between oils of the same gravity and the same base, it becomes necessary to ascertain the difference in the cost of transportation for the various fields. And, also, to ascertain the prices paid for the crude oil produced in these fields.

The average price of the Urania oil for the year 1928 was 75c per barrel. (R., 49, 64).

The posted price for the oil of the Vinton field in 1928 was $1.20 per barrel. (R., 63).

These oils were shipped, according to complainant, to the same destination. (R., 24, Tr. 514).

Conceding that the oils were shipped to a common point, namely, Port Arthur, in the State of Texas, it becomes necessary to ascertain the difference in the cost of transportation, for it follows that in posting the prices at

the mouth of the well the purchaser of the oil considers the cost of transportation. (Tr. 514, p. 21, Sec. 2).

In the Vinton field the oil is transported solely by pipe line. (R., 90). The pipe line charge from Vinton to Port Arthur is 15c per barrel of 42 gallons. The gathering charge is 7½c; the total charge per barrel is 22½c. (R., 60).

In the Urania field the oil is transported to Port Arthur in tank cars. (R., 90). The oil must be transported first from the field to the loading racks. While there is no proof in the record as to this particular charge, yet there is in the record the charge made by pipe line companies for this service. This charge, as shown by the tariffs of said companies, is 12½c per barrel. In addition to the gathering charge of 12½c per barrel, there is an additional charge of 2½c per barrel for loading the oil into the tank cars. (R., 61).

The freight rate from the Urania field to Port Arthur is .496c per barrel. (R., 90). When the oil reaches Port Arthur it must be unloaded from the tank cars into the receptacles or tanks of the purchaser, and for this service there is an additional charge of 2½c per barrel.

The total transportation charge per barrel from the Urania field is .671c. The difference between the cost of transporting oil from the Urania field, which is .671c, and the cost of transporting it from Vinton, which is .225c, is 45c per barrel. A purchaser purchasing crude oil could, therefore, pay at the mouth of the well 45c more for the oil produced in the Vinton field than it could pay for the oil

produced in the Urania field. This difference of 45c per barrel in the cost of transportation, added to the price which complainant receives in the Urania field, namely, 75c, would make the Urania oil worth $1.20 per barrel, which is the identical price that complainant alleges the Vinton oil is worth.

The actual production in the Urania field for the year 1928 was 2,497,489 barrels. (R., 52). Its total value, based upon $1.20 per barrel, would be the sum of $2,996,986.80. Under the statute it would be taxed at the rate of 4c per barrel, or the sum of $99,899.56. The rate at which it would be taxed would be 3.33%.

On the 17th day of March, 1927, the price of crude oil in the Urania field was $1.10 per barrel. Grade A Gulf Coast oil was selling at $1.30 per barrel. (R., 62, 63). If we add to the Urania price the difference in the cost of transportation of .45c per barrel, we will have the Urania oil worth $1.55 per barrel as against $1.30 per barrel for Grade A oil.

The testimony of the witness, C. D. Keene, testifying for the plaintiff (R., 79), is:

> "Witness is familiar with Urania oil, having produced there, and having used such oils in his refineries. To his knowledge, it is practically the same as Gulf Coast A oil."

On July 14, 1928, the Urania oil was quoted at $1.00 per barrel, while the Vinton oil was quoted at $1.30 per barrel. (R., pp. 48, 49). If we add the difference in the cost of transportation to the price paid for Urania oil, we

will have that oil worth $1.45 as against $1.30 per barrel for Vinton.

Plaintiff's Exhibit (R., 49) shows the average price of the Urania oil on February 21, 1928, at 75c per barrel. It shows Grade A Gulf Coast at $1.20 per barrel. If we add to the price of the Urania oil the cost of transportation, the price of Urania oil will be $1.20 per barrel, which is the identical price of the Grade A Gulf Coast oil.

Plaintiff's Exhibit (R., 49) shows the average price of the oil in the Urania field for the year 1926, per barrel, was $1.28; for 1927, 94c, and for 1928, 75c. Taking Vinton as Grade A, the price in 1926 was $1.52 per barrel; 1927, $1.30 per barrel; and 1928, $1.20 per barrel.

If we add to the price of Urania oil the difference in the cost of transportation, we have the Urania oil in 1926 worth $1.73 per barrel as against $1.52 for Vinton. In 1927 we have the Urania oil worth $1.39 as against the Vinton oil at $1.30. In 1928 we have the Urania oil worth $1.20 as against $1.20 per barrel for the Vinton oil.

Using respondent's Exhibit (R., 64), we have the Urania price quoted in 1926 at $1.15; Vinton at $1.60 (R., 63). If we add to the Urania price the difference in the cost of transportation, we have the Urania oil worth $1.60 per barrel, which is the identical price for which the Vinton was selling. The same Exhibit shows in 1927 the Urania oil selling for $1.00 per barrel and the Vinton oil for $1.20 per barrel. If we add the difference in the cost of transportation to the Urania oil, the Urania oil would be worth $1.45 as against $1.20.

The production in the Vinton field in 1928 was 1,598,441 barrels. (R., 52). The price on July 1, 1928, was $1.20 per barrel. The Act in controversy was approved on July 7, 1928. The value of the above oil would be $1,918,129.20. Taxed at the rate of 4c per barrel, the tax would be $63,937.64. The rate at which it would be taxed would be 3.33%.

STARKS DOME.

Starks Dome is in the Parish of Calcasieu in South Louisiana. The oil from this field is transported by pipe line. (R., 90). The transportation charge is the same as the Vinton charge. Both fields are in South Louisiana and both are in the Parish of Calcasieu. The average price for the oil in this field for the years 1927 and 1928 was $1.20 per barrel. (R., 63). The difference in transportation between the oil from this field and the Urania field would account for, and does account for, the difference in the price.

The production for 1928 was 185,321 barrels. (R., 53). Its value at $1.20 per barrel was $222,385.20. Under the Act in controversy it would be taxed at 4c per barrel, or the sum of $7,412.84. The rate at which it would be taxed would be 3.33%.

JENNINGS.

In the Jennings field the oil is transported by a short pipe line from the field to a point where it can be loaded into barges, and is barged to Port Arthur, Texas (R., 90). The gathering charge, including the charge for loading, is

.125c. (R., 58). The barge line charge is .165c. (R., 90). The unloading charge after it arrives at Port Arthur would be .025c. The total transportation charge is .315c. The difference between the cost of transporting oil from the Urania field and the Jennings field is 36c per barrel.

From August, 1928, through December, 1928, Urania oil was selling at 85c and 90c per barrel, according to plaintiff's Exhibit. (R., 36). If we add the difference in the cost of transportation to 85c per barrel, we would have the Urania oil worth $1.21 per barrel as against $1.15 per barrel for Jennings oil. (R., 63). If we add 36c to 90c, the price at which the Urania oil was selling, we will have that oil worth $1.26 as against $1.15 for Jennings oil.

The entire production of the Jennings field for the year 1928 was 299,030 barrels. (R., 53). The average price was $1.15 per barrel. (R., 63). Its value was $343,-884.50. Under the statute in controversy it would be taxed at 4c per barrel, or $11,961.20. The rate at which it would be taxed would be 3.4%. Thus we see that the oil produced in the Jennings field would be taxed under the Act at 3.4%, while the oil in the Urania field would be taxed at 3.33%.

EDGERLY.

The production in the Edgerly field in South Louisiana in 1928 was 359,522 barrels. (R., 53). The posted price on July 1, 1928 (R., 63), was $1.20 per barrel. Its value was $431,426.40. Taxed at the rate of 4c per barrel, the tax would amount to $14,380.88. The rate at which it would be taxed would be 3.33%.

In August, September, October, November and December, 1928, Urania oil was selling at 85c and 90c per barrel. (R., 36). The cost of transporting oil from the Edgerly field is .275c. (R., 56). The difference between the cost of transporting oil from the Urania field and the Edgerly field is approximately 40c per barrel. If we add the difference in the cost of transportation to the Urania oil, that oil will be worth $1.25 per barrel as against $1.20 for Edgerly oil. If we add 40c to the 90c for which Urania oil was selling, we have a value of $1.30 per barrel as against $1.20 per barrel for Edgerly.

BELLEVUE.

The production for the year 1928 was 316,343 barrels. (R., 52). Based upon the posted price of $1.25 per barrel, (R., 49, 63) its value would be $395,428.75. Taxed at the rate of 4c per barrel, the tax would be $12,653.72. The rate at which it would be taxed would be 3.2%.

COTTON VALLEY.

This field is in North Louisiana. The price per barrel is posted by the Standard Oil Company and the Gulf Refining Co. *Oil and Gas Journal of date June 13, 1929, p. 141,* (R., between 62, 63). The oil is transported by pipe line (R., 90). The gathering line of the Standard Pipe Line Co. extends from this field to its trunk line at Weller. The main line extends from Weller, in North Louisiana, to Anchorage, in South Louisiana.

The Standard Oil Company delivers the oil to its refinery at Baton Rouge, which is across the Mississippi River from Anchorage.

The pipe line charge from Weller to Anchorage is 30c per barrel; the gathering charge is 12½c per barrel. (R., 62). The cost of transporting the oil from Anchorage across the Mississippi River, to its refinery at Baton Rouge, if any, is not in the record. The pipe line charge by the Gulf Refining Company to Port Arthur, Texas, is 40c per barrel. (R., 55). The gathering charge is 12½c per barrel. There is an additional charge of 2½c per barrel if the oil is delivered to tank cars of the purchaser. (R., 56). The total charge is 55c per barrel.

The Oil and Gas Journal, of date June 13, 1929 (R., 62, 63), shows that oil with a gravity of less than 36° sells at a flat price, and when above 36° sells according to the gravity table. *(See also testimony of C. D. Keene, R., 78).*

During the year 1928, according to its Exhibits A1 and A2 (R., 22, 34, incl.), plaintiff produced in this field 325,393.15 barrels of oil having a gravity less than 36°. This oil, according to its figures, was sold at the following prices and was subject to the following rates of taxation:

BARRELS:	GRAVITY:	PRICE:	TAX:
113,392.77	28° to 31°	75c	4¼c
209,752.55	31° to 31.5°	75c	5c
1,344.56	31° to 32°	75c	5c
903.27	33° to 36°	75c	8c

Plaintiff does not show to whom it sold the oil nor to what point it was shipped. If it were shipped to the Standard Oil Company, the cost of transportation was 42½c per barrel. The value, based upon the prices above named plus the transportation charge, would be $382,-

336.95. The total tax would be $15,446.36. The rate at which it would be taxed would be 4%. If shipped to Port Arthur, the cost of transportation, which is 55c, would be added to the price per barrel which plaintiff received. Based upon this price, the value would be $423,011.10. The total tax $15,446.36. The rate at which it would be taxed would be 3.6%.

Plaintiff also produced 252,414.63 barrels of oil with a gravity of over 36°. The gravity and the prices at which it was sold was as follows:

BARRELS	GRAVITY	PRICE
64.27	40° to 40.9°	$1.56
61.67	39° to 39.9°	1.51
419.18	41° to 41.9°	1.61
661.24	42° to 42.9°	1.66
66,908.60	above 43°	1.76
324.58	44° to 44.9°	1.52
3,006.08	46° to 46.9°	1.58
1,872.69	47° to 47.9°	1.61
7,486.52	48° to 48.9°	1.64
19,036.53	49° to 49.9°	1.67
68,945.26	50° to 50.9°	1.70
44,750.04	51° to 51.9°	1.73
38,877.97	52°	1.76

Based upon the above prices per barrel, plus the cost of transportation to Port Arthur, the value would be $573,929.75. The tax would be $27,753.55. The total value of all of the oil produced by plaintiff in this field in the year 1928 would be $996,940.85. The total tax would be $43,199.91. The rate at which it would be taxed would be 4.3%.

The average gravity of the Cotton Valley field is 29°. (R., 64). The posted price per barrel for oil of gravity under 36°, on June 13, 1928, was 85c. (R., 62, 63). The tax on oil of gravity of 29° is .04¼c per barrel. The total production for the year 1928 was 1,720,046.00 barrels. (R., 52). The value per barrel would be 85c, plus the cost of transportation to Port Arthur, or $1.40 per barrel. The total value would be $2,408,064.40. The total tax $73,-101.95. The rate at which it would be taxed would be 3.03%.

HAYNESVILLE.

In the Haynesville field plaintiff produced, in 1928, 703,157.93 barrels. It sold this oil for prices ranging from $1.16 to $1.28 per barrel. All of the oil was over 28° gravity and was divided, as follows (R., 22, 36):

BARRELS:	GRAVITY:	PRICE:	RATE OF TAX:
80.67	30° to 30.9°	$1.16	.04¼c
168.37	31° to 31.9°	1.11	.05c
879.22	32° to 32.9°	1.16	.08c
74.93	32° to 32.9°	1.20	.08c
7,634.82	33° to 33.9°	1.22	.08c
31,250.19	33° to 33.9°	1.19	.08c
29,592.71	33° to 33.9°	1.21	.08c
60,374.29	34° to 34.9°	1.24	.08c
196,616.86	34° to 34.9°	1.22	.08c
187,509.41	34° to 34.9°	1.26	.08c
34,743.68	35° to 35.9°	1.26	.08c
99,077.28	35° to 35.9°	1.25	.08c
54,725.53	35° to 35.9°	1.31	.08c
429.97	36° to 36.9°	1.28	.10c

The transportation charge from Haynesville to Port Arthur, Texas, is 55c, the same as from Cotton Valley to Port Arthur. (R., 55, 56). The value, based upon the prices above named plus the transportation charge of 55c, would be $1,261,594.73. The total tax would be $56,-253.16. The rate at which it would be taxed would be 4.4%.

The average gravity of the oil in this field is 35° (R., 63), the posted price on July 1, 1928, was $1.25 per barrel. (R., 63). The production for the year of 1928 was 2,175,315 barrels. (R., 52). The total value per barrel, including the transportation charge, would be $1.80 per barrel. The total value would be $3,915,567.00. The tax, at the rate of 8c per barrel, would be $174,025.00. The rate at which it would be taxed would be 4.4%.

PINE ISLAND.

During the year 1928 plaintiff produced in this field, according to its monthly totals (R., 26, 27, 29, 37, 38), 21,974.99 barrels. The gravity of the oil in this field ranged from 29°-29.9° to 41.9°. The oil was transported to Port Arthur by pipe line. (R., 90). The pipe line charge per barrel is 40c; the gathering charge 12½c. There is an additional charge of 2½c per barrel for deliveries to tank cars, making a total charge of 55c per barrel. (R., 55, 56).

Of the above amount, the following quantities were sold at the following prices:

176.43	barrels	@	$1.14	per bbl.
2,646.13	"	@	1.30	" "
691.01	"	@	1.34	" "
1,753.54	"	@	1.37	" "
103.89	"	@	1.36	" "
7,401.78	"	@	1.31	" "
467.54	"	@	1.28	" "
355.26	"	@	1.40	" "
6,377.91	"	@	1.41	" "
704.05	"	@	1.51	" "
477.07	"	@	1.46	" "
354.44	"	@	1.56	" "
465.94	"	@	1.61	" "

The total value, based upon the above prices plus the transportation charge, would be $42,036.67. The total tax would be $2,186.66. This amount is the amount shown by plaintiff's own figures. (R., 25, 28, 34, 35). The rate at which it would be taxed would be 5%.

From the above we see that the fields in North Louisiana are taxed at the following percentage:

Urania	3.33%
Cotton Valley (below 36°)	3.6%
Cotton Valley—average price page 25 of this brief)	3.03%
Haynesville	4.4%
Haynesville average	4.4%
Pine Island	5 %
Bellevue	3.2%

In South Louisiana the fields are taxed at the following percentage:

Vinton	3.3%
Starks Dome	3.33%
Edgerly	3.33%
Jennings	3.4%

We thus see that plaintiffs Urania oil would be taxed and is taxed, under the statute in controversy, at the same rate that the oil of Vinton, Starks Dome and Edgerly is taxed, and is less than the oil at Jennings is taxed.

It will further be seen that plaintiffs Cotton Valley average gravity is taxed at a rate less than the Jennings, Vinton, Edgerly and Starks Dome fields.

The only fields in which plaintiff produces, which are taxed higher than the oil in South Louisiana is taxed, are the Haynesville and Pine Island fields.

The gravities, as shown by plaintiff's own Exhibits, of the Haynesville and Pine Island fields, are higher than the gravities of South Louisiana and are not in the same class fixed by the statute with the oils produced in the South Louisiana fields.

The entire production of plaintiff in the Pine Island field for the year 1928, as shown by its own statements and Exhibits, was 21,974.99 barrels. Of this amount only 176.43 barrels was of a gravity less than 36°. The remainder was above 36°.

Plaintiff produced no oil in the Haynesville field of a less gravity than 30°.

The oil from the Haynesville field, and in the Cotton Valley field above 36°, would be taxed at the same rate that the oil from the Yount-Lee well, in South Louisiana, is taxed. If in the years to come, wells other than the Yount-Lee well are brought in in the South Louisiana field, gravtiy of which will equal the gravity of the oil produced by plaintiff in the North Louisiana field, it will be taxed the same under the statute.

The record and Exhibits show conclusively that all the oil produced by plaintiff which is similar to, or which is in the same class with the oil produced in the South Louisiana field, is taxed at the same rate as is the oil of South Louisiana, and if there is any difference it is that the South Louisiana oil is taxed at a higher rate than is plaintiff's oil.

The law, as we understand it, is that:

> Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous.
>
> *Keeney v. New York, 222 U. S. 536.*

> "The State is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in clear and hostile discriminations between particular persons and classes."
>
> *Citizens Telephone Co. v. Fuller, 229 U. S. 322.*

> "Where the Legislature has classified property, taxes must be uniform on each class of property, but the taxes on different classes are not re-

quired to be uniform for this is the purpose of classification."

Kline v. Jefferson Cy. Board of Tax Supervisors, 18 S. W. (2d. ed. 1012).

So that, even under the uniformity clause, taxes upon different classes are not required to be uniform.

The guaranty of the equal protection of the law, as we understand it, does not prohibit legislation limited either in the objects to which it is directed or by the territory within which it is to operate, but merely requires that all persons similarly situated will be treated alike.

Hart Refineries Co. v. Harmon, 278 U. S. 499;
Toyota v. Hawaii, 226 U. S. 184;
Billings v. Illinois, 188 U. S. 97;
Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232;
Truax v. Corrigan, 257 U. S. 312.

The Federal constitutional guaranty of the equal protection of the law is not a guaranty of an equality of operation or application of State legislation.

Stebbins v. Riley, 268 U. S. 137, 69 L. ed. 884.

If the practical operation of the statute in controversy results in some inequality, which we submit it does not, then we submit that a statute levying a flat rate upon the quantity produced without regard to gravity would result in still greater inequality.

Upon the trial of this case it was shown, and the testimony was not contradicted, that, as originally drawn,

the statute in controversy provided for the levying of a flat rate of 7½c per barrel. That the oil people prevailed upon the Governor of the State to change that provision and to classify the oil, according to gravity, because that would be a fairer and a more just method. Yielding to their persuasive argument, the bill was changed and the oil classified and different rates fixed for the different classifications. (R., 94).

Let us, therefore, see just what inequality such a statute levying a flat rate would produce. We will take, first, the Haynesville field in North Louisiana.

Plaintiff's production in this field, according to its own statement, was 703,157.93 barrels. Based upon the price plus transportation to Port Arthur, Texas, the value of the oil produced by plaintiff in this field for said year would be $1,198,483.46. Taxed at the rate of 7½c per barrel, the tax would have been $52,736.85. The rate at which it would have been taxed would have been 4.4%.

The value of the same quantity in the Vinton field at $1.20 per barrel, plus the cost of transportation to Port Arthur, Texas, would have been $1,019,579.00. Taxed at the rate of 7½c per barrel, the tax would have been $52,-736.85. The rate at which it would have been taxed would be 5.1%.

The same would be true of the Starks Dome field.

The value of the same quantity in the Jennings field, based upon the price of $1.15 per barrel plus the cost of transportation (31.5), would have been $1,030,126.37.

The tax would have been $52,736.85. The rate at which it would have been taxed would have been 5.1%.

The value of the same quantity in the Edgerly field, based upon a price of $1.20 per barrel plus the cost of transportation, would have been $1,037,157.95. The tax would have been $52,736.85. The rate at which it would have been taxed would have been 5.1%.

The value of the same quantity in the Bellevue field, in North Louisiana, based upon the price of $1.25 per barrel, would have been $878,947.41. The tax would have been $52,736.85. It would have been taxed at the rate of 6%.

The value of the same quantity in the Urania field at 75c, plus transportation of .671c, would be $998,484.26. The tax would be $52,736.85. The rate at which it would have been taxed would have been 5.2%.

Based upon plaintiff's production in the Cotton Valley field, the following would result:

In this field, according to its own Exhibits, plaintiff in 1928 produced 577,807.78 barrels. (R., 32, 34). The value was $997,216.95. Taxed at the rate of 7½c per barrel, the tax would have been $43,335.58. The rate at which it would have been taxed would have been 4.3%.

The value of the same quantity in the Vinton field would have been $837,821.28. Taxed at the rate of 7½c per barrel, the tax would have been $43,335.58. The rate at which it would have been taxed would have been 5.1%.

The same percentage would apply to the Starks Dome field.

The value of the same quantity in the Jennings field would have been $846,488.40. The tax would have been $43,335.58. The rate at which it would have been taxed would have been 5.1%.

The value of the same quantity in the Edgerly field would have been $852,266.47. The tax would have been $43,335.58. The rate at which it would have been taxed would have been 5.1%.

The value of the same quantity in the Bellevue field would have been $722,259.73. The tax would have been $43,335.58. The rate at which it would have been taxed would have been 6%.

In the Urania field, the value would have been $820,487.05. The tax $43,335.58, and the rate at which it would have been taxed would have been 5.2%.

Thus we see that the oil in South Louisiana would be taxed, under this system, at the rate of 5.1%, while the oil produced by plaintiff in the Haynesville and Cotton Valley fields would have been 4.4% and 4.3%; and the other field in which plaintiff operates, namely, the Urania field, would have been taxed at practically the same rate as the South Louisiana fields, and Bellevue would be taxed at 6%.

So that, if the Legislature had pursued this course, then oil having a greater value would have been taxed at

a lower rate and the oil having a lower value would have been taxed at a higher rate. Therefore, the statute in controversy produces a greater degree of equality than a statute levying a flat rate, without regard to gravity, would have produced.

If the Legislature had levied this flat rate, this case, in our opinion, would still be before this Court, the only difference being that the plaintiffs would be those who produced in South Louisiana and those who produced in the Bellevue and Urania fields, instead of the present plaintiff.

If, under the facts and circumstances presented in this case, this Court can strike with constitutional death the statute in controversy on the ground that it is discriminatory, then does it not reasonably follow that if the tax should be levied upon a flat basis that it also would be held unconstitutional as being discriminatory, because the inequalities produced by its practical operation, as shown herein, would be greater than the inequalities, if any, produced by the statute in controversy; and does it not necessarily follow that, if this should be true, the Legislature could not levy a tax at all upon a quantity basis, notwithstanding the fact that the Constitution of the State specifically authorizes it? Would not the effect of such a decision nullify that provision of the Constitution of the State when it is not attacked in this suit? Would it not follow that because of some minor inequality, if such inequality existed, that a provision of the Constitution of the State providing a tax for the severing of the natural products from the soil, and which has been a part of our taxing sys-

tem for more than twenty years, would be rendered inoperative?

It is well settled that any classification adopted by a State, which has a reasonable basis, will be sustained against an attack based upon the equal protection of the laws clause of the Fourteenth Amendment, and that every state of facts sufficient to sustain such classification, which can be reasonably conceived of as having existed when the law was enacted, will be assumed.

Lindsley v. National Carbon Gas Co., 220 U. S. 62;
Crescent Oil Co. v. Mississippi, 257 U. S. 137;

The presumption is that the Legislature acted with full knowledge of all facts and conditions essential to valid legislation of this kind. The statute in controversy is clothed with that presumption. Two Federal Courts, consisting of three judges each, have twice upheld its constitutionality.

In view of the record here presented, can this Court say that the discretion vested in the Legislature in matters of taxation has been abused and its act arbitrary? Can this Court say that plaintiff, by its proof, has overcome the presumption with which this Act is clothed? From this record, can this Court find that this Act discriminates as against plaintiff in such a way as to offend the provisions of the Fourteenth Amendment?

We submit that the Act in controversy does not produce any inequality in so far as plaintiff is concerned; that if the Court should find that inequality is produced, then

that inequality is of a minor nature and is not greater than, but, on the contrary, less than would result from the levying of a flat rate. That said system provides a more just basis for taxation than would a flat rate; that there is no intentional or systematic discrimination against any class or against any person or corporation; that, on the contrary, the Act operates fairly and justly upon all persons or corporations producing oil of the same class, and this is all that is required by the equal protection clause of the Fourteenth Amendment.

(b-1)

THE CLASSIFICATION OF OIL ACCORDING TO GRAVITY, AND THE LEVYING OF A TAX ACCORDING TO GRAVITY, IS REASONABLE, AND THE METHOD ADOPTED BY THE LEGISLATURE BY ACT 5 OF 1928 IS NEITHER UNREASONABLE NOR ARBITRARY.

If those who are engaged in the business of producing, buying or selling crude oil, buy and sell on a gravity basis, it follows that gravity bears a fair and reasonable relation to the value of the oil.

That crude oil is so bought and sold cannot be seriously questioned. This fact is established by plaintiff's own witnesses.

Mr. R. A. Burdick, plaintiff's cashier, testified that all oil sold or purchased by plaintiff in each of the fields in which it operates was bought and sold on a gravity basis. (R., 76).

It is established by the Oil and Gas Journals offered in evidence by both plaintiff and defendant. It is established by plaintiff's own Exhibits. It is established by the fact that during the year 1927 all of the oil produced in the State was sold according to gravity. This statement is made because in those fields where a flat price was posted it was known to those purchasing oil that the gravity was below 25° and the flat price was therefore posted. If this is questioned, then it cannot be denied that 68% of the entire production for the year 1927 was sold on a gravity basis; that 70% of the entire production for the year 1928 was sold on a gravity basis.

In the year 1927 the entire production of the State of Louisiana was 23,167,239.00 barrels. (R., 50). Of this amount, 5,032,387.00 barrels was produced in South Louisiana and 18,134,852.00 barrels in North Louisiana. (R., 50, 51).

Plaintiff's witness, B. P. Critenden, in suit No. 514 of the October Term 1928 of this Court, at page 59, testified that 64% of the coastal or South Louisiana oil was Grade A, and 36% Grade B. This affidavit was submitted by plaintiff and not by defendant, as shown by the index to the above numbered record. Grade B oil is sold according to the gravity table, as shown by the Extracts from the Oil and Gas Journals appearing in this record. Grade A oil is all oil below 25° gravity, and is sold at a flat price. Grade B oil is all other oil not included in Grade A, and, of course, above 25° gravity.

The oil in the Urania, Bellevue and Hosston fields was sold and is sold at a flat price. (R., 78, testimony of

plaintiff's witness, C. D. Keene). The gravity of the oil produced in these fields is below 25°. (R., 64).

The production of the Hosston field does not appear in this record.

The production of Bellevue and Urania was 4,198,-273 barrels. (R., 51).

The production of the Bellevue and Urania fields, deducted from the entire production in North Louisiana of 18,134,852.00 barrels (R., 51), leaves 13,936,579 barrels which was sold on a gravity basis.

The production of South Louisiana was 5,032,387 barrels; 36% of this amount would be 1,811,659.00 barrels which was sold on a gravity basis.

The total, of both North and South Louisiana sold on a gravity basis, was therefore 15,748,238 barrels.

The total sold on a flat basis was 7,419,001 barrels.

In 1928 the entire production was 22,018,014 barrels. Of this amount, 14,837,136 barrels was produced in North Louisiana and 7,180,878 barrels in South Louisiana. (R., 52).

If we deduct from the North Louisiana production the production of Bellevue and Urania, which was 2,813,832 barrels (R., 52), there would remain 12,023,304 barrels which was sold on a gravity basis.

Of the South Louisiana production, 2,585,115 barrels was sold according to gravity (Grade B) and 4,595,761 barrels at a flat price. The total sold on a gravity basis was 14,608,419 barrels. The total sold at a flat price was 7,409,595 barrels.

The total production in Louisiana for the year 1928 was 22,018,014. (R., 52). Of this amount, 14,837,136 barrels was produced in North Louisiana and 7,180,878 barrels in South Louisiana.

Plaintiff's witness, E. Olivier (R., 83), testified that on June 1st, 1929, that 53.74% of the daily production in South Louisiana was Grade A and 46.26% was Grade B. If this average held true for the year, which we assume it would, then 70% of the oil produced in the State would be sold upon a gravity basis.

The production in North Louisiana was 14,837,136 barrels.

The total production of the Urania and Bellevue fields, of North Louisiana, which was sold at a flat basis, was 2,813,832 barrels. (R., 52).

Deducting the 2,813,832 barrels, the combined production of the Bellevue and Urania fields, would leave 12,023,304 barrels of oil which was sold on a gravity basis in North Louisiana.

46.26% of the production of South Louisiana, which was 7,180,878 barrels, would be 3,321,874.16 barrels classed as Grade B, which was sold on a gravity basis.

The total amount of the entire State, which was sold on a gravity basis, was 15,345,178 barrels.

Taking plaintiff's own figures and its own testimony, 70% of the production of oil in Louisiana for the year 1928, the year in which the Act in controversy became effective, was sold on a gravity basis, thus showing and demonstrating beyond question and beyond doubt that gravity is the controlling and determining factor in arriving at the value of oil in the State of Louisiana.

Conceding, therefore, that gravity is not a factor in making up Grade A oil, which, of course, we do not, it is clear that 68% of the entire production for the year 1927, and 70% of the entire production of 1928, was sold on a gravity basis.

Whatever theories or opinions may be advanced and expressed by the experts adduced by plaintiff, such theories and opinions must yield to that which the facts show actually happened—to what the oil industry, in each day of the year, has actually done—that is, the actual buying and selling of crude oil on a gravity basis.

If, to those who are engaged in the oil industry, gravity bears such a relation to the value of oil so that that industry buys and sells on a gravity basis, then why does it not bear such a relation to crude oil so as to serve as an adequate, just, fair and reasonable basis upon which to base a classification of such oil?

The oil in South Louisiana is divided into Coastal Grade A and Grade B. Grade A oil, which sells at a flat

price, is below 25 degrees gravity. All other oil is Grade B. (R., 87).

Grade B oil is quoted according to gravity. *(See Oil and Gas Journals, R., 62, 63).*

While it is quite true that Grade A oil must contain not more than a certain percentage of sulphur and have a definite viscosity, nevertheless it must be less than 25° Beaume gravity, while Grade B oil is oil of a higher gravity.

The Urania field of North Louisiana is practically the same as Gulf Coast A oil.

The significant line of distinction between Coastal Grade A and Grade B is its gravity.

It appears from the accredited Oil Journals, carrying the posted prices by the various oil companies, that in the oil fields throughout the country the price of oil is posted according to its gravity.

In the Bellevue, Jennings, Vinton, Edgerly, Starks Dome and Urania fields a flat price is fixed. The record shows that the gravity of the oil of each of these fields is below 25°. (R., 48, 64). These gravity tables are in common usage, and gravity has been selected by the oil companies themselves as a basis for the price which they pay for crude oil. It is an undisputed fact that no crude oil is purchased until the gravity is ascertained.

The Mid-Continent field, which is the dominating field of the United States, quotes prices according to gravity.

It is quite easy to say that gravity is not a determinative factor in the Bellevue and Urania fields of North Louisiana, and in the Jennings, Vinton and Edgerly fields of South Louisiana, because a flat price is paid for such oil, but it is difficult to accept it as indifferent when it is ascertained that such fields are practically of the same gravity—that is, the gravity of the oil in these fields is below 25° Beaume. That the gravities of the fields mentioned are below 25° is shown by defendant's Exhibit. (R., 63, 64).

One cannot, by simply giving crude oil an alphabetical denomination, escape the inevitable truth, that is, that gravity enters into the fixing of its character, and its price.

The fact that Gulf Coast Crude "A" is used in the manufacture of lubricating oils does not indicate its lack of those essential elements from which gasoline may be produced, but it is so used because of its adaptability for that purpose. Under the modern process of manufacturing known as "cracking", the heavier elements contained in Gulf Coast Crude "A" may be broken up, in which event it would be used for its gasoline content. (R., 82).

Gravity does bear a reasonable relation to crude oil, and such a classification is neither remote, speculative nor arbitrary.

Plaintiff's witness R. A. Burdick (R., 76) testified that all oil produced by plaintiff in each of the fields in which it operates was bought and sold on a gravity basis.

Plaintiff's witness C. D. Keene (R., 78) testified that gravity is a factor in price changes and values in the Caddo, DeSoto, Red River, Homer, Haynesville and Cotton Valley fields.

When this case was tried on the merits, plaintiff was not operating in the Urania field. (R., 76). The fields in which it was operating were Cotton Valley, Pine Island (which is in the Caddo field), and Haynesville.

The testimony of plaintiff shows, and it is admitted in its brief, that the oil produced by it is oil with a parraffin base and that the oil produced in South Louisiana is oil with an asphalt base. It contends that paraffin base oils are more valuable for their gasoline content, while asphalt base oil is more valuable for lubricating purposes. Other differences are pointed out.

Would not these differences authorize and justify a different classification? Would not such classification have an adequate, just, fair and reasonable basis?

Suppose the Legislature had provided that the tax should be levied upon a quantity basis, but that it should be levied only upon oils having a paraffin base? Had it done so, then the South Louisiana operators and the North Louisiana operators producing asphalt base oils would not have been required to pay any tax, while the producers of paraffin base oil would have been required to pay the tax.

Undoubtedly the Legislature would have had this right insofar as the Fourteenth Amendment is concerned.

Heisler v. Thomas Colliery Co., 260 U. S. 254.

In the cited case the contention was made that anthracite coal and bituminous coal were fuels, and necessarily must be associated in the same class for taxation in disregard, or in diminution of whatever other differences may exist between them in composition, qualities or uses, and that not to so associate them was arbitrary and unreasonable, and, therefore, within the ban of the Constitution of the United States.

This Court, at page 254, said:

> "It would be commonplace and wearisome to enlarge much upon the principle that presides in and determines the classification of objects. It is too necessary and too familiar in the affairs of life. We cannot go far in thought or practice without its exercise. It is the process of considering objects together or in separation as determined by their properties or some of them and the purpose we have in hand. If the purpose and properties have relation the process is logically justified."

The Court further said, at page 255:

> "It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety."

In the above cited case, the producers of anthracite coal, who sold in competition with those who purchased

bituminous coal, paid a tax, while the producers of bituminous coal paid none. The coals were different just as oils having an asphalt base, and oils having a paraffin base, according to plaintiff's witnesses and argument, are different. They differ in chemical composition and physical attributes.

The Legislature of Louisiana, without offending against the Federal Constitution, could have, under the authority of this case, levied this tax upon crude oil having a paraffin base, without levying it upon oil having an asphalt base.

This record shows that plaintiff only produces oil in the Haynesville, Cotton Valley and Pine Island fields, which are in the Caddo field. It shows (R., 78) that in these fields the value and the price of crude oil is determined by gravity.

If the oil produced by plaintiff is bought and sold by gravity, and its value is determined by gravity, what cause has plaintiff to complain? As to it, does not gravity determine the value of its oil? What interest has it to urge and contend that as to the oil produced in South Louisiana gravity bears no relation to the value? It does not produce in South Louisiana and no tax is attempted to be imposed upon it for severing oil in South Louisiana.

If the Legislature could have required the producers of paraffin base oils to pay the tax provided by this Act, and not have required the producers of asphalt base oil to pay any tax whatsoever, and plaintiff could not

have complained of such a tax, what right has it to complain if the tax provided by Act 5 of 1928 imposes upon it, according to its contention, merely a higher tax than is imposed upon those who produce and sever oil of an asphalt base?

If plaintiff could not complain if it were required to pay a tax for severing oil in the Northern part of the State, which it claims is oil with a paraffin base, while the South Louisiana operators would not be required to pay any, what interest has it to complain of a classification which requires it, according to its contention, to pay a higher tax than that paid by the producers of an entirely different class of oil in South Louisiana?

If the classification of paraffin base oils, according to gravity, would be a fair, just and reasonable classification, and such a classification plaintiff admits would be fair, then what right and what interest has plaintiff, who does not now produce asphalt base oil, to question or contest such a classification as being unreasonable and arbitrary? What right or interest has it to contend that gravity bears no relation to asphalt base oil or Grade A oil when it does not produce it? This would be a question to be presented by the operators in South Louisiana who produce asphalt base oils. They are not before the Court so contending, and plaintiff is without authority to champion their rights, if any, they had.

No greater tax is imposed upon complainant than is imposed upon its competitors of the same class.

It has no competitors in South Louisiana because no operator in this section, except those who operate in the Yount-Lee field, produces oil of a like gravity and oil with the same base as that which is produced by plaintiff. The operators in the Yount-Lee field are taxed for the privilege of severing the oil from the soil at the same rate as is plaintiff. This is so because the gravity of the oil is the same as some of the oils of plaintiff, and therefore, being of the same gravity and within the same class, they are taxed at the same rate.

If plaintiff has any competitors who produce and sever crude oil of the same gravity, those competitors pay the same rate whether they sever the oil in South, North, East or West Louisiana.

No section of the State is discriminated against, nor is any discrimination practiced betweeen classes or persons in the same class.

Hart Refineries Co. v. Harmon, 278 U. S. 499.

The system of taxation here attacked has long been a part of the taxing system of Louisiana. This principle was written into the Constitution of the State more than twenty years ago. The Legislature of the State has exercised this right and this privilege for more than eighteen years. It is not a new and suddenly devised scheme of taxation.

(b-2)

THE CLASSIFICATION ADOPTED BY THE STATUTE IS REASONABLE AND FAIR, AND IS NEITHER UNREASONABLE NOR ARBITRARY.

We have heretofore shown in its brief that no discrimination, systematic, intentional or otherwise, is produced by the practical operation of the statute in question.

Not only has plaintiff not shown that the practical operation of the statute results in a hostile discrimination, but, on the contrary, the record shows that oils of the same class are taxed at the same rate.

The record further shows that the result of the operation of the statute is not to produce inequality of taxation nor to produce hostile or arbitrary discrimination. If inequalities result from the operation of such Act, then we submit that such inequalities are not greater than the inequalities which would result from any system of taxation.

We submit further that if such inequality results from the practical operation of this Act, that such inequality is less than would result if a flat tax, without regard to gravity, was levied upon the quantity produced.

We have shown that if a flat tax was levied upon the quantity, without regard to the gravity of the oil, that the higher priced oils would be taxed at a lower rate than the lower valued oil, thus practicing a discrimination in favor of the higher gravity and more valuable oil, and against the lower gravity and less valuable oil.

It is true that the statute in controversy provides for six different classes. It is true that the only oil which the plaintiff produces, which is similar to or in the same class with the oil produced in South Louisiana, is the Urania oil. However, plaintiff no longer produces in this field. (R., 76).

This record demonstrates beyond question and beyond doubt that when the difference in the cost of transportation is taken into consideration, the prices, over a period of three years, of the oils of the Urania field and the Gulf Coast oils are practically the same. They are taxed at the same rate. If there is a difference in the price of said oils it is in favor of and not against the Urania oil.

The oil produced in the Yount-Lee field, which is in South Louisiana, and which is of a higher gravity than the other South Louisiana oils, is taxed at the same rate as the oil which is produced by plaintiff in the fields of North Louisiana of the same gravity.

The record clearly establishes the fact that differences in gravity does reflect differences in value. This is shown by Oil and Gas Journals introduced by both plaintiff and defendant. It is shown by the testimony of plaintiff's witness C. D. Keene (R., 78) and also by the testimony of plaintiff's witness R. A. Burdick, as he testified that all oil bought and sold by his Company in each of the fields in which it operates is bought and sold on a gravity basis.

The Oil and Gas Journals show that for every increase in gravity, whether in South or North Louisiana,

there is an increase in the posted prices for crude oil. If gravity has no relation to the value of oil, then why does the oil industry post the prices according to gravity? If there was some other element more important in determining the value of oil, why did not the oil industry select that element? The fact that it selected gravity, as the basis upon which to quote prices, is conclusive proof, it seems to us, that gravity denotes and determines the value of crude oil.

Plaintiff divides its argument into six sub-headings, and seeks, by a comparison of prices, to show that the rates adopted make the classification and the Act unreasonable.

In the first part of our brief, we have taken up each field in North and South Louisiana and compared the prices, and we have shown, we think, that when the cost of transportation is taken into consideration, there is no difference in the price paid for oil nor in the rates for which oils of the same class are taxed.

Plaintiff, in its brief, states (page 35) that when the average price of Urania crude was $1.00 per barrel, the price of Gulf Coast A was $1.42, and that Urania oil would be taxed 4% and the Coastal oil 2.8%. Reference is made to Record 49, but it will be seen that R., 49 does not show the prices set forth by plaintiff, and evidently this reference is error. If, however, it did show these prices, then we submit that the difference in the cost of transportation, which is shown in this brief to be 45c per

barrel, added to the $1.00 per barrel, would make the Urania oil worth $1.45 per barrel as against $1.42 for Gulf Coast A.

In its attempt to show that the practical operation of this statute results in inequality of taxation, and in its attempt to show that the classification is arbitrary, plaintiff entirely disregards, ignores and overlooks the part that the cost of transportation and the difference in the cost of transportation plays in fixing the prices in the various fields.

The Fourteenth Amendment does not require equality of rate upon the different classes. All that it requires is that the rate be the same for each class, and this the statute in controversy does.

In the case of *Michigan Central R. R. Co. v. Powers, 201 U. S. p. 291*, this Court said:

> " * * * there was a systematic undervaluation of other property in the State which resulted in denying to this plaintiff the equal protection of the law. The trial Court found against this charge. It is enough to say that generally we accept the finding of a trial court upon a question of fact when the testimony respecting it is conflicting. It may also be said that a legislature is not bound to impose the same rate of tax upon one class of property that it does upon another. As it may exempt all of one class, so it may impose a different rate of taxation. It is sufficient if all of the same class are subjected to the same rate and the tax is administered impartially upon them."

POINT II.

ACT 5 OF 1928 IS NOT VOID AS BEING IN CONFLICT WITH SECTION 21 OF ARTICLE X OF THE CONSTITUTION OF LOUISIANA OF 1921.

(a)

The Severance Tax imposed by the statute in controversy is levied according to quantity and in the manner provided by the above numbered Article and section of the State Constitution.

The position of plaintiff is that, since the question of whether the Act in controversy violates the said Constitution has never been presented to the State courts for decision, this question must be decided by this Court as an original question.

In support of this contention, plaintiff cites *Dawson v. Kentucky Distilleries Co., 255 U. S. 288.*

We admit that this Court has held that where it has jurisdiction over a cause by reason of the fact that questions arising under the Constitution of the United States are presented, that it may also pass on all questions of State law which are involved.

United Fuel Gas Co. v. Railroad Commission, 49 Sup. Ct. Rep. 159.

Ritsy v. Chicago R. I. & Pac. Ry Co., 270 U. S. 378.

However, we submit that this Court has also repeatedly held, and has never overruled these decisions so

far as we have been able to ascertain, that unless the case imperatively demands a decision upon whether or not a statute violates the State Constitution, it would be reluctant to adjudge such a statute to be in conflict with the State Constitution before that question has been considered by the State tribunals to which the question properly belongs.

See—*L. & N. Railroad Co. v. Garrett, et als, 231 U. S. 298.*

In the case of *Michigan Central Railroad v. Powers, 201 U. S. 245*, the Court said:

> "The unconstitutionality of a statute may depend upon its conflict with the Constitution of the State or with that of the United States. If conflict with the State Constitution is the sole ground of attack, the Supreme Court of the State is the final authority. The validity of this act has not been directly presented to or determined by the State court, but the first attack by the parties interested is made in the Federal court and by this suit, and conflict with both constitutions is alleged. Undoubtedly a Federal court has the jurisdiction, and when the question is properly presented it may often become its duty to pass upon an alleged conflict between a statute and the State Constitution, even before the question has been considered by the State tribunals. All objections to the validity of the act, whether springing out of the State or of the Federal Constitution, may be presented in a single suit and call for consideration and determination. At the same time the Federal courts will be reluctant to adjudge a State statute to be in conflict with the State Constitution before that question has been considered by the State tribunals. Especially is this true when the statute is one affecting the revenues of the State, and therefore of general public interest."

We, therefore, submit that if this Court reaches the conclusion that the Act in controversy does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, that, under the decisions here cited, it would be the duty of the Court not to pass upon the constitutionality of said Act, in so far as the State Constitution is concerned, since the highest courts of the State, to which this duty properly belongs, has not yet passed upon it.

If, however, this Court should be of the opinion that it is its imperative duty to pass upon the statute in so far as the questions of State law are concerned, then we submit that the Act is not violative of Section 21 of Article X of the Constitution of 1921, but, on the contrary, said Act is consistent with and entirely in harmony with the provisions of the said Article and said section.

We submit that the tax is clearly levied upon the quantity as is specifically authorized by the Constitution. The amount of tax a given operator would pay under the said Act depends upon the quantity that he or it produces. Of course, the rate at which the tax would be computed depends upon the class within which the oil so produced by him or it falls.

The lower Court said:

> "In adopting Act 5 of 1928 providing for definite taxes by the barrel and defining different classes of oil, taxable at different rates per barrel, the Legislature was acting well within the authority granted by the Louisiana Constitution." (R., 68).

(b)

THE CLASSIFICATION BY THE ACT IS FAIR AND REASONABLE, AND IS NEITHER ARBITRARY NOR UNREASONABLE.

This question has been argued heretofore in this brief.

The Act in controversy does not present a case where there has been an intentional overvaluation of the property of an individual or corporation and where the same class of property belonging to another has been undervalued. It does not present a case where plaintiff has been singled out and its property taxed at its value, or overtaxed, while property of a like nature belonging to its competitors is undervalued or undertaxed.

The Legislature of the State of Louisiana has been authorized for more than twenty years to levy the tax in question. It has, at various times, and by different methods attempted to discover and to adopt a method of levying the tax, which would be not only fair to those persons who would be required to pay it, but at the same time would protect the revenues of the State. In seeking to discover such a system and to adopt such a method, it has provided for the levying of the tax both upon the gross market value and upon a quantity basis, as shown by the acts referred to in the statement.

Experience has shown the fault of both systems. It was thought and believed that the method here adopted

was a better method and was one which would be not only fair and just to all persons who would be required to pay the tax, but at the same time would be fair and just to the State and would properly protect its revenues.

> "To be able to find fault with a law is not to demonstrate its invalidity. The problems of government are practical ones and may justify, if they do not require, rough accomodations—illogical it may be, and unscientific."
>
> *Salomon v. State Tax Commission, 49 Sup. Ct. Rep. 195, 73 L. ed., p. 464.*

We submit that if the Act does produce inequality in taxation, such inequality does not render the Act unconstitutional as being violative of either the State or Federal Constitutions.

Nicety of precision and exactitude in taxation is impossible, nor is a rigid formula required. As said by this Court in *Bell's Gap R. R. Co. v. Pennsylvania, supra*, the equal protection laws clause was never "intended to compel the State to adopt an iron rule of equal protection."

We submit further that, if it does produce inequality, the inequalities are less than would result if the Legislature had levied a flat tax without regard to the gravity of the oil.

We submit further that this statute embodies a principle that is generally fair, and that it does equal and exact justice as near as any statute can be expected to do.

We respectfully submit that the judgment of the lower Court is correct and should be affirmed.

Respectfully submitted,

PERCY SAINT,
Attorney General;

W. H. THOMPSON,
Assistant Attorney General.

GEORGE SETH GUION,
Of Counsel.

APPENDIX.

Table of Contents.

	Page
Act 140 of 1922	61-73
Act 301 of 1926	74-76
Act 5 of 1928	77-82

ACT NO. 140.

House Bill No. 411. By Mr. Dreyfus, Chairman of The Ways and Means Committee, Substitute for House Bill No. 15 by Mr. Schell.

AN ACT

To carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided.

Section 1. Be it enacted by the Legislature of Louisiana, That for the year 1923, and for each subsequent year, taxes as authorized by Section 21 of Article 10 of the Constitution of 1921, are hereby levied upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and

ores; also marble, stone, gravel, sand, shells and other natural deposits.

Such taxes shall be paid by the owner or proportionately by the owners thereof at the time of the severance, and become due and exigible quarterly, as herein provided; and they shall operate as a first lien and privilege on such natural resources, which lien and privilege shall follow said natural resources into the hands of third persons whether in good or bad faith, and whether the same be found in a manufactured or unmanufactured state.

Section 2. For the purposes of taxation natural resources severed from the soil or water shall be divided into two classes, on which taxes are hereby levied and shall be paid at the following rates:

On oil and gas, three per centum (3%) of the gross market value of the total production thereof:

On all other natural resources, two per centum (2%) of the gross market value of the total production thereof.

For the purposes of this Act said gross market value of each such product or natural resource shall be computed in its unmanufactured state, and as of the time when, and at the place where, it was severed or taken from the soil or water.

Section 3. All such taxes shall be collected quarterly by the respective sheriffs and Ex-Officio Tax Collectors

of the several parishes from which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and in the same manner and at the same time as required by law for other State collections.

When so paid into the State Treasury. two-thirds (⅔) of the severance taxes collected on oil and gas, together with all of the severance taxes collected on all other natural resources severed from the soil or water, shall be credited by the Auditor and Treasurer to a special fund, which is hereby created, to be known as the Severance Tax Fund of the State of Louisiana.

The remaining one-third (⅓) of the severance taxes collected on oil and gas is hereby allocated to the parish from within which such taxes are collected, and shall be credited to such parish by the Auditor and Treasurer, provided such allocation and credit shall not exceed two hundred thousand dollars ($200,000.00) in any parish in any one year. When this limit of two hundred thousand dollars ($200,000.00) shall have been reached, there shall be no further allocation, and all additional collections for the year shall be credited in full to the Severance Tax Fund hereinbefore created.

Section 4. The amounts allocated and credited to each oil and gas producing parish under this Act, shall be apportioned and distributed quarterly among the parish schools, and such district governing authorities as have jurisdiction over the territory from within which such resources are severed and tax collected.

Such apportionment and distribution shall be made within the first fifteen days of each calendar quarter by the Auditor and Treasurer in proportion to the amount of *advalorem* property taxes payable to each such governing authority as shown by the last completed assessment roll, and shall cover all amounts allocated and credited to the parishes during the preceding quarter.

Section 5. Every person, firm, corporation or association of persons severing any natural resources from the soil or water in this State shall, within thirty (30) days after the expiration of each quarter-annual period expiring, respectively, on the last day of March, June, September and December of each year, file with the Supervisor of Public Accounts a statement under oath, on forms prescribed by him, of the business conducted by such person, firm, corporation or association of persons during the last preceding quarter-annual period, showing the kind of natural resources so severed or produced, the gross quantity and actual cash value thereof, the names of the owners at the time of severance, the portion owned by each, and such other reasonable and necessary information pertaining thereto as the Supervisor of Public Accounts may require for the proper enforcement of the provisions of this Act. There shall also be shown on such quarterly reports the location of each such natural resource and the place or places where produced or severed from the soil or water.

At the time of rendering such quarter-annual report, each person, firm, corporation or association of persons shall concurrently file a duplicate thereof with the

tax collector of the parish where said natural resource is taken or severed from the soil or water; and shall pay to the said tax collector a tax of 3% on the gross market value of the total amount of oil and gas, and a tax of 2% on the gross market value of the total amount of all other natural resources severed from the soil or water during the preceding three months.

Section 6. Except as otherwise provided in this Act, the making of said reports, and the payment of said taxes, shall be by those actually engaged in the operation of severing, whether it be the owner of the soil, or other person severing from the soil of another, or the owner of any such natural resource severing from the soil of another.

The reporting taxpayer shall collect or withhold out of the value of the products severed, the proportionate parts of the total tax due by the respective owners of such natural resources at the time of severance.

Section 7. Every person, firm, corporation or association of persons actually engaged in severing oil, gas, or other natural resources from the soil or water, or actually operating oil or gas property, or other property from which natural resources are severed, under contracts or agreements requiring payment direct to the owners of any royalty interest, either in money or in kind, is hereby authorized, empowered and required to deduct from any amount due, or from anything due, the amount of the tax herein levied before making such payments.

Section 8. When any person, firm, corporation or association of persons actually engaged in severing oil or gas, or other natural resources from the soil or water, under contracts or agreements requiring payments direct to any owner of the proportionate share of such natural resource, as set out in the preceding section, shall sell such oil or gas, or other natural resource to any person, firm, corporation or association of persons, under contracts or agreements requiring such purchasers to pay all owners of such natural resources direct, then the person, firm, corporation or association of persons actually severing such natural resources from the soil or water, or actually operating such oil or gas property, may not be required to deduct the tax herein levied, but in which event such deduction shall be made by the purchaser before making payments to each owner of such oil, gas or other natural resources; provided that nothing herein shall be construed as releasing the person, firm, corporation or association of persons severing the products from liability for the payment of said taxes.

Section 9. Every person, firm, corporation or association of persons purchasing oil, gas or any other natural resources severed from the soil or water, under contracts or agreements requiring such purchaser to make payment direct to the owners of such oil, gas, or other natural resource, is hereby authorized, empowered and required to deduct from any amount due any owner of such natural resource the amount of the tax levied by the provisions of this Act before making such payments.

All persons, firms, corporations or associations of persons required to deduct from amounts due to others the tax herein levied shall file with the Supervisor of Public Accounts, and with the tax collector of the parish where such natural resource is severed from the soil or water, the reports herein required, and shall at the same time pay to the said tax collector the amount of the tax thus deducted or withheld under the provisions of this Act; provided that nothing herein shall be construed as releasing the person, firm, corporation or association of persons severing the resources from liability for the payment of said taxes.

Section 10. Whenever the title to any natural resources being severed from the soil or water is in dispute, or whenever the purchaser of such natural resources, or any person, firm, corporation or association of persons engaged in severing natural resources from the soil or water, or in the actual operation of oil or gas property, shall be withholding payments on account of litigation, or for any other reason, such purchaser of natural resources severed from the soil or water, or person, firm, corporation or association of persons actually engaged in severing such natural resources from the soil or water, or the actual operation of oil or gas properties, is hereby authorized, empowered and required to deduct from the gross amount thus held the amount of the tax herein levied, and to make remittance thereof to the tax collector of the parish wherein such natural resources are severed, as herein provided.

Section 11. The owners of natural resources severed from the soil or water are hereby made proportionately responsible for the payment of the tax herein levied, and if the tax due on such natural resources severed from the soil or water is not paid by the purchaser thereof, or by the person, firm, corporation or association by the person, firm, corporation or association of persons actually engaged in severing such natural resources from the soil or water, or operating oil or gas properties, then the Supervisor of Public Accounts shall make, in any manner feasible, and cause to be recorded in the mortgage records of the parish where such natural resources are severed from the soil or water, a statement under oath showing the proportionate amount of the tax due by each said owner of the natural resources severed from the soil or water, which statement when filed for record, shall operate as a first lien, privilege and mortgage on all of the property from which the resources were severed and on all of the property of the respective tax debtors, as the case may be, and said property shall be subject to seizure and sale for the payment of the taxes due; provided nothing herein shall be construed as waiving or releasing the privilege on the resources severed wherever found.

Section 12. Whenever the Supervisor of Public Accounts shall cause the statement provided for in the preceding section to be recorded, he shall give notice to the tax debtor by registered letter of the recordation of such statement, and fifteen days thereafter the said Supervisor of Public Accounts shall cause the sheriff and tax collector of the parish wherein such natural resources are severed, to seize and sell, for the payment of such taxes, any property

belonging to the tax debtor, or tax debtors, as provided above, which may be found within the jurisdiction of the said sheriff and tax collector.

Section 13. The sheriff and tax collector of any parish, when requested by the Supervisor of Public Accounts, is hereby required to seize and sell any property, assets and effects belonging to any person, firm, corporation or association of persons owing the tax herein levied on any natural resource severed from the soil or water, after the recordation of the statement required in Section 11, and after the notice required in Section 12 has been given; and all such seizures and sale shall be conducted in the manner and form now required for the sale of similar property for taxes, and penalties shall be imposed and collected as prescribed herein and by general laws.

Section 14. All oil and gas leases, interest in minerals, mineral rights, royalty interests, timber contracts, and rights of any kind to the ownership of any natural resource severed from the soil or water, are hereby declared to be subject to seizure and sale for the payment of the tax herein levied in preference to all other claims, liens and privileges.

Section 15. The tax provided by this Act shall become delinquent after the date fixed for each quarter-annual report to be filed in the office of the Supervisor of Public Accounts, and from such time shall, as a penalty for such delinquency, be subject to a penalty of 2% per month and other penalties provided in the general revenue laws of this State.

The payment of the severance tax levied by this Act shall be in addition to, and shall not affect the liability of the parties so taxed for, the payment of all state, parochial, municipal, district and special taxes levied upon their real estate and other corporeal property; but no further or additional tax or license shall be levied or imposed upon oil or gas leases or rights; nor shall any additional value be added to the assessment of land by reason of the presence of oil or gas therein or their production therefrom. No severance tax or license shall be levied or imposed by any parish or other local subdivision of the State.

Section 16. The Supervisor of Public Accounts shall have the power to require any person, firm, corporation or association of persons engaged in severing natural products from the soil or water to furnish any additional information by him deemed to be necessary for the purpose of computing the amount of said tax; and for said purpose to examine the books, records and files of such person, firm, corporation or association of persons; and, to that end, shall have the power to examine witnesses, and if any such witness shall fail or refuse to appear at the request of the Supervisor of Public Accounts, or refuse access to books, records and files, said Supervisor of Public Accounts shall certify the facts and the name of the witness so failing or refusing to appear, or refusing access to books and papers, to the District Court of the State having jurisdiction of the party; and said Court shall thereupon issue a summons to the said party to appear before the said Supervisor, or his assistant, at a place designated within the jurisdiction of the Court, on a day fixed, to be continued as occasion may require, and give such evidence, and open for inspection

such books and papers as may be required, for the purpose of ascertaining whether or not any return so made is the true and correct return as herein required; and whenever it shall appear to the Supervisor that any such person, firm, corporation or association of persons engaged in severing such natural products from the soil or water has unlawfully made an untrue and incorrect return, as herein provided, said Supervisor shall correct the return and shall compute said tax on same, and certify the same to the tax collector for collection.

Section 17. If any person, firm, corporation or association of persons shall fail to make a report of the gross production and value of its natural products (upon which the severance tax is herein levied) within the time and in the manner prescribed by law for such report, it shall be the duty of the Supervisor of Public Accounts to examine the books, records and files of any such person, firm, corporation or association of persons to ascertain the amount and value of such production and to compute the tax thereon as provided herein, and according to the procedure hereinbefore provided, where witnesses refuse to testify, or access to books and papers is refused, and shall add thereto the cost of such examination, together with any penalties accruing thereon.

Section 18. Any person who shall intentionally make any false oath to any report required by the provisions of this Act shall be deemed guilty of perjury and shall be subject to all penalties prescribed for said crime.

Section 19. It is hereby made the duty of the Supervisor of Public Accounts to supervise and enforce the col-

lection of all taxes that may be due under the provisions of this Act; and, to that end, the said Supervisor is hereby vested with all of the power and authority conferred by this Act.

Section 20. It is hereby made the duty of all purchasers and others dealing in any natural product severed from the soil or water in Louisiana to file quarterly with the said Supervisor of Public Accounts a statement, under oath, showing the names and addresses of all persons, firms, corporations, or associations of persons from whom each said purchaser or dealer has purchased any natural product severed from the soil or water in Louisiana during said quarter; together with the total quantity of, and gross price paid for, each such natural product. Said reports shall be filed within thirty (30) days after the expiration of each quarter, and shall be made on such forms as may be prescribed by said Supervisor of Public Accounts. The failure of any person, firm, corporation or association of persons to make reports as herein provided shall be punished by fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each such offense.

Section 21. Nothing contained in this Act shall be construed as in any wise impairing or depriving the State of Louisiana of any rights and claims whatsoever it may have for the license tax due or to become due under Act 31 of 1920 and other laws, and as herein provided; said rights and claims being hereby specially reserved, whether they be in litigation or not, and all proceedings pending or which may be brought shall be prosecuted as though this Act had not been enacted; provided that said license tax is hereby imposed and shall be collectible in accordance with the pro-

visions of said Act 31 of 1920 up to and until the time herein prescribed for the reports and payments of the severance tax levied and as levied by this Act; it being the true intent and purpose of this Act that said license tax shall be imposed and collected until the time aforesaid; and provided further that all funds thus collected shall be paid into the Severance License Tax Fund as heretofore.

Section 22. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or any part thereof, directly involved in the controversy in which such judgment has been rendered.

Section 23. This Act shall become effective in accordance with all its terms and conditions from and after the 31st day of December, 1922.

Approved by the Governor:
July 14, 1922, 8:40 A. M.

A true copy:
JAMES J. BAILEY,
Secretary of State.

ACT NO. 301 OF 1926.

House Bill No. 86 By Mr. Landry (Iberia)

AN ACT

To amend and re-enact Sections 3 and 4 of Act No. 140 of 1922 entitled "To carry into effect Section 21 of Article X of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided."

SECTION 1. Be it enacted by the Legislature of Louisiana, That Sections 3 and 4 of Act No. 140 of 1922 be amended and re-enacted so as to read as follows:

"SECTION 3. All such taxes shall be collected quarterly by the respective sheriffs and Ex-Officio Tax Collectors of the several parishes from within which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and in the same man-

ner and at the same time as required by law for other State collections.

When so paid into the State Treasury, two-thirds (2/3) of the severance taxes collected on oil and gas, and two-thirds (2/3) of the severance taxes collected on salt and all of the taxes collected on all other natural resources severed from the soil or water, shall be credited by the Auditor and Treasurer to a special fund, which is hereby created, to be known as the Severance Tax Funds of the State of Louisiana.

The remaining one-third (1/3) of the severance taxes collected on oil and gas, and the remaining one-third (1/3 of the severance taxes collected on salt are hereby allocated to the parish from which such taxes are collected, and shall be credited to such parish by the Auditor and Treasurer, provided such allocation and credit shall not exceed two hundred thousand ($200,000.00) dollars in any parish in any one year. When this limit of two hundred thousand ($200,000.00) dollars shall have been reached, there shall be no further allocation and all additional collections for the year shall be credited in full to the Severance Tax Fund herein before created.

SECTION 4. The amounts allocated and created to each oil and gas producing parish, and to all parishes producing other natural resources under this Act, shall be apportioned and distributed quarterly among the parish schools, and such governing authorities as have jurisdiction over the territory from which such resources are severed and tax collected.

Such apportionment and distribution shall be made within the first fifteen days of each calendar quarter by the Auditor and Treasurer in proportion to the amount of *ad valorem* property taxes payable to each such governing authority as shown by the last completed assessment roll, and shall cover all amounts allocated and credited to the parishes during the preceding quarter."

Approved by the Governor: July 16, 1926.

A true copy:

JAMES J. BAILEY,
Secretary of State.

ACT NO. 5.

House Bill No. 89, By Mr. McClanahan.

AN ACT

To amend and re-enact Sections 2 and 5 of Act 140 of 1922, and entitled:

"An Act to carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest products; minerals, such as oil, gas, sulphur, salt, coal, lignite, and ores; also marble, stone, gravel, sand, shells, and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided," and to amend and re-enact section 3 thereof, as amended and re-enacted by Act No. 301 of 1926.

Section 1. Be it enacted by the Legislature of Louisiana, That Section 2 of Act 140 of 1922, entitled:

"An Act to carry into effect Section 21 of Article 10 of the Constitution of 1921 by levying a tax upon all natural resources severed from the soil or water; including all forms of timber, turpentine and other forest prod-

ucts; minerals, such as oil, gas, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells and other natural deposits; fixing liability for, and prescribing the method of collecting and enforcing the payment of such tax; requiring those engaged in the severance of, and dealing in, such natural resources to make reports of their business as may be necessary for the proper enforcement of this Act; to provide penalties; and to provide for the imposition and payment of the license tax due and to become due under Act 31 of 1920 and other laws, and as herein provided." be amended and re-enacted so as to read as follows:

Section 2. Taxes on natural resources severed from the soil or water, as levied by Section 1 of this Act, shall be predicated on the quantity severed, and shall be paid at the following rates:

(1) On cypress timber, twenty-six (26) cents per thousand feet, log scale.

(2) On second growth or old field pine timber, seven (7) cents per thousand feet, and on virgin pine timber seventeen (17) cents per thousand feet, log scale.

(3) On ash and hickory timber, twenty-four (24) cents per thousand feet, log scale.

(4) On cottonwood, red gum, magnolia, oak, poplar and sycamore timber, twelve (12) cents per thousand feet, log scale.

(5) On tupelo gum, black gum and sap gum timber, seven (7) cents per thousand feet, log scale, and on all other hardwoods ten (10) cents per thousand feet, log scale.

(6) On turpentine, (crude gum), ten (10) cents per barrel of 400 pounds.

(7) a. On oil of 28° gravity and below, four (4) cents per barrel of 42 gallons.

b. (1) On oil above 28° gravity and not above 31° gravity, four and one-fourth (4¼) cents per barrel of 42 gallons.

b. (2) On oil above 31° gravity and not above 32° gravity, five (5) cents per barrel of 42 gallons.

(c.) On oil above 32° gravity and not above 36° gravity, eight (8) cents per barrel of 42 gallons.

(d.) On oil above 36° gravity and not above 43° gravity, ten (10) cents per barrel of 42 gallons.

(e.) On oil above 43° gravity, eleven (11) cents per barrel of 42 gallons.

(8) On gas, one-fifth (1/5th.) of one cent (1c) per thousand cubic feet, measured at ten ounce (10 oz.) pressure.

(9) On sulphur, fifteen (15) cents per ton of two thousand pounds.

(10) On salt, four (4) cents per ton of two thousand pounds.

(11) On coal, five (5) cents per ton of two thousand pounds.

(12) On lignite, five (5) cents per ton of two thousand pounds.

(13) On ores, five (5) cents per ton of two thousand pounds.

(14) On marble, ten (10) cents per ton of two thousand pounds.

(15) On stone, one and one-half (1½) cents per ton of two thousand pounds.

(16) On gravel, one and one-half (1½) cents per ton of two thousand pounds.

(17) On sand, one (1) cent per ton of two thousand pounds.

(18) On shells, one and one-half (1½) cents per ton of two thousand pounds.

Section 2. That section 3 of Act 140 of 1922, as amended and re-enacted by Act 301 of 1926, be amended and re-enacted so as to read as follows:

"Section 3. All such taxes shall be collected quarterly by the respective Sheriffs and Ex-officio Tax Collectors of the several parishes from within which the natural resources are severed, and by them shall be paid into the State Treasury as collected, and, unless otherwise herein provided, in the same manner and at the same time as required by law for other state collections.

When so paid into the State treasury, all of the severance taxes collected on oil, gas, salt and shells, not otherwise allocated herein, together with all of the severance taxes collected on all other natural resources severed from the soil or water, shall be credited by the auditor and treasurer to a special fund, which is hereby created to be known as the Severance Tax Fund of the State of Louisiana.

One-fifth (1/5th) of the severance taxes collected on oil, gas, shells, timber, sand, and gravel, is hereby allocated to the parish from which such taxes are collected, and shall be credited to such parish by the auditor and treasurer, provided such allocation and credit shall not exceed Two Hundred Thousand ($200,000.00) Dollars in any par-

ish in any one year. When this limit of Two Hundred Thousand ($200,000) Dollars shall have been reached, there shall be no further allocation, and all additional collections for the year shall be credited in full to the Severance Tax Fund hereinbefore created."

That Section 5 of Act 140 of 1922 be amended and re-enacted so as to read as follows:

"Section 5. Every person, firm, corporation or association of persons severing any natural resources from the soil or water in this State shall, within thirty (30) days after the expiration of each quarter-annual period expiring, respectively, on the last day of March, June, September and December of each year, file with the Supervisor of Public Accounts a statement under oath, on forms prescribed by him, of the business conducted by such person, firm, corporation or association of persons, during the last preceding quarter-annual period, showing the kind of natural resources and the gross quantity of each so severed or produced, the names of the owners at the time of severance, the portion owned by each, and such other reasonable and necessary information pertaining thereto as the Supervisor of Public Accounts may require for the proper enforcement of the provisions of this Act. There shall also be shown on such quarterly reports the location of each natural resource and the place or places where produced or severed from the soil or water.

At the time of rendering such quarter-annual report to the Supervisor of Public Accounts, each person, firm,

corporation, or association of persons, shall concurrently file a duplicate thereof with the Tax Collector of the Parish where said natural resources were taken or severed from the soil or water; and shall pay to said Tax Collector a tax on the gross quantity of each natural resource severed, computed at the rate applying thereto as named in Section two (2) of this Act."

APPROVED BY THE GOVERNOR: July 7, 1928.

A true copy:

JAMES J. BAILEY,
Secretary of State.